

Karl Karg  
Direct Dial: +1.312.876.7700  
karl.karg@lw.com

233 S. Wacker Drive, Suite 5800  
Chicago, Illinois 60606  
Tel: +1.312.876.7700 Fax: +1.312.993.9767  
www.lw.com

## LATHAM & WATKINS LLP

September 26, 2012

### **VIA E-MAIL & CERTIFIED MAIL**

Mr. Thomas A. Benson  
Trial Attorney  
Environmental Enforcement Section  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611

Mr. Craig Melodia  
Associate Regional Counsel  
U.S. Environmental Protection Agency - Region 5  
77 West Jackson Boulevard (C-14-J)  
Chicago, IL 60604-3590

### **Re: Ashland Site – WCL Access Issues**

Dear Messrs. Benson & Melodia:

On behalf of Northern States Power Company of Wisconsin, Inc. ("NSPW"), this letter provides an update regarding our negotiations with Wisconsin Central, Ltd. ("WCL") over access to begin performance of the Work required under the Uplands RD/RA Consent Decree (the "Decree"). Regrettably, despite NSPW's continued efforts, which have been ongoing for months, these negotiations appear to have stalled. As we requested with respect to the City of Ashland, NSPW now requests the assistance of the United States in resolving access with WCL so that work at the Uplands can begin as soon as possible. Respectfully, we believe the lack of cooperation by WCL (and the City) on access is unacceptable and calculated to frustrate or delay the Work, and we believe the time has come for the United States to firmly and promptly resolve all access issues so that NSPW can begin the Work.

Notably, many of the issues of final disagreement between NSPW and WCL mirror those areas of disagreement between NSPW and the City of Ashland. For example:

- WCL is unwilling to grant EPA or the State authorization or consent to perform any investigations, sampling, or sub-surface work as is required in paragraph 27 of the Decree.

#### FIRM / AFFILIATE OFFICES

Abu Dhabi	Moscow
Barcelona	Munich
Beijing	New Jersey
Boston	New York
Brussels	Orange County
Chicago	Paris
Doha	Riyadh
Dubai	Rome
Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.
Milan	

LATHAM & WATKINS LLP

- WCL will not agree to register its property on the WDNR Database for purposes of implementation of the Institutional Control Implementation and Assurance Plan ("ICIAP"), as is required by paragraph 27(a)(3) of the Decree.
- WCL refuses to grant access for long-term operation and maintenance activities required by the Work.
- WCL also wants the right to immediately terminate access during performance of the Work at its discretion, which could seriously impede performance of the remedy and result in NSPW's violation of the Decree and exacerbation of site conditions.

Furthermore, we believe it would be useful to share a redline of the draft access agreement so that the United States can reach its own conclusions regarding the reasonableness of the parties. This redline should be read as follows:

- All of the changes other than those suggested for Paragraph 2 constitute NSPW's attempts to accommodate concerns raised by WCL; and
- The change reflected in Paragraph 2 is requested by WCL.

As we have said in the context of our access dispute with the City of Ashland, the Decree contains certain minimum obligations which NSPW must meet, and we will not compromise our ability to meet those obligations by agreeing to provisions that are contrary to our obligations unless we are given license to do so by the enforcement authorities. We believe our position on these issues is non-controversial, and that the parties can and should resolve access even while other issues, such as allocation of liability at the Site, remain in dispute. Like the City of Ashland, WCL also fails to recognize its own status as a PRP in these access negotiations and is seeking indemnity provisions that are more appropriate for a non-PRP owner.

Because NSPW has taken the lead in addressing the Site, the other potentially responsible parties have become increasingly recalcitrant and uncooperative. The United States is the only party with the authority to resolve the present impasse over access, and NSPW respectfully urges the United States to act with all deliberate speed so that work can begin now. If work cannot begin by early November, we believe the citizens of Ashland will have to endure an additional year or more of disruption at the Site, given our need to work around weather and other conditions at the Site.

Sincerely,

  
Karl A. Karg

Enclosure